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10/689,230	10/20/2003	David A. Ebert	67167-009	4065
26/096 7590 12/05/2008 CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009				
EXAMINER				
ESTREMSKY, GARY WAYNE				
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte DAVID A. EBERT

Appellant

Appeal 2007-0787
Application 10/689,230
Technology Center 3600

Decided: December 05, 2008

Before RICHARD E. SCHAFER, RICHARD TORCZON and
ROMULO H. DELMENDO, *Administrative Patent Judges*.

SCHAFER, *Administrative Patent Judge*.

DECISION ON REHEARING

Applicant requests reconsideration pursuant to 37 C.F.R.
§§ 41.50(b)(2) and 41.52.¹ We deny the request.

Our decision reversed the rejection of all claims and entered a new ground of rejection as to Claim 1 under 35 U.S.C. § 103(a). The panel did not express any view on the effect of the new ground on the remaining claims.

¹ Applicant's request was not received by the panel until November 5, 2008.

An applicant may request reconsideration pointing out, with particularity, matters thought to have been overlooked or misapprehended by the panel in reaching its decision. 37 C.F.R. § 41.52(a)(1).

Applicant argues that “the Board overlooked the opportunity to advance the application by expressing no view as to the patentability of claims 2-4 and 6-11.” Recon, p. 2, ¶ 1. Applicant then asks that “the Board address the rejection of the remaining claims 2-4 and 6-11.”

We neither failed to address the rejection of Claims 2-4 and 6-11, nor overlooked the “opportunity” to advance the application. Our decision reversed all the rejections entered by the examiner as to all claims. Decision, p. 7, ll. 3-7. While entering a new ground, we also expressly declined to consider the effect of the new ground on the patentability of Claims 2-11 leaving that determination to the examiner. Decision, p. 7, ll. 8, ll. 21-23,

Applicant speculates that the Examiner will reject Claims 2-11 utilizing the same references and same bases used during prosecution and invites us to review the speculated rejections. Recon., p. 2. We decline the invitation. The new ground of rejection relied on a different basis for unpatentability than relied on by the examiner. The application of the new ground to the more detailed subject matter of Claims 2-11 is, in our view, best left to the expertise of the examiner.

REHEARING DENIED

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Application 10/689,230

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